UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of: COLD SPRINGS RANCHERIA OF MONO INDIANS OF CALIFORNIA, Respondent.	HUDALJ 09-M-009-IH-02 July 2, 2009

Appearances

Geoffrey L. Patton, Attorney; Joseph J. Kim, Attorney
United States Department of Housing and Urban Development
For Complainant

Robert Marquez, Tribal Chairman
Cold Springs Tribe of Mono Indians of California
For Respondent

INITIAL DECISION AND ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

Procedural History. On September 30, 2008, the General Deputy Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (HUD or Department), decided to impose remedies upon the Cold Springs Rancheria of Mono Indians of California (Cold Springs or Respondent), because HUD determined that Cold Springs was in substantial noncompliance with requirements imposed by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4101 *et seq*. 24 C.F.R. §§1000.534(c) and (d). The alleged noncompliance related to Respondent's accounting for expenditure of Indian Housing Block Grants (IHBGs) provided by HUD for affordable housing activities.[1]

[1] The specific remedies were previously proposed in a Notice of Intent to Impose Remedies/Offer of Informal Meeting (NOI) dated March 26, 2008, a copy of which was provided to Respondent.

After notification of impending remedies curtailing its IHBGs, Respondent requested a hearing on November 5, 2008.[2] HUD issued a COMPLAINT FOR IMPOSITION OF REMEDIES (the "Complaint") on December 8, 2008, seeking a determination that its decision to impose remedies against Respondent pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4101 et seq., as implemented by 24 C.F.R. Part 1000 is supported by a preponderance of the evidence. This Court subsequently issued an order scheduling a hearing.[3]

After several delays, a hearing was anticipated for June, 2009.[4] On May 5, 2009, the Government filed a motion for Summary Judgment. Respondent did not submit a Response. Having considered the matters before it, the Court determined that the motion was ripe for decision. For the reasons that follow, the Government's Motion for Summary Judgment, resolving all the issues presented, is GRANTED.[5]

Background. This case arose from a monitoring review conducted by the Southwest Office of Native American Programs (SWONAP), conducted in 2005, concerning HUD's IHBGs awarded to the Indian Housing Authority of Central California (IHACC). IHACC acted as a Tribally Designated Housing Entity for Respondent, and two other Indian Tribes, to receive and administer grant funds on behalf of its constituent tribes. During the 2005 review, HUD found numerous instances in which IHACC had not complied with IHBG program requirements, including program violations in the administration of a grant to Respondent. These findings were detailed in HUD's Final Monitoring Report (FMR) dated September 16, 2005.[6] Over the next three and one-half years, HUD corresponded with IHACC, instructing it to correct these violations and describing in detail the steps that were to be taken to effectuate the required corrections. During this period, HUD copied Respondent on all relevant correspondence.

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[2] Attached to the Complaint for Imposition of Remedies ("Complaint"), as Exhibit D.

[3] The regulations governing the hearing process under NAHASDA are found at 24 C.F.R. Parts 26 and 1000. Upon filing a request for a hearing by a respondent, the Office of Administrative Law Judges has jurisdiction over the matter pursuant to 24 C.F.R. §§ 26.2 and 1000.540.

[4] The Government filed its Complaint for Imposition of Remedies on December 8, 2008. On December 16, 2008, Respondent requested a continuance of the hearing date. The Government counsel responded on December 19, 2009, without objection and proposed that the Court also adjust the intervening procedural deadlines. As result of a conference call, the hearing was set tentatively for the week of March 9, 2009, and the parties agreed to advise the Court of their discussions of a possible settlement. Despite additional continuances, there was no settlement. On April 8, 2009, Respondent re-asserted its request for a hearing. On April 10, 2009, the Government moved to compel a formal answer to the Complaint, and Respondent filed an answer in the form of a letter, dated April 16, 2009. A third continuance was granted on April 28, 2009, because Government counsel had not received the answer. At a telephone conference on May 29, 2009, the Court cancelled the hearing date, pending decision on this motion. Actual preparation of this Initial Decision and Order was hampered by the lack of a functional law library for the HUD Office of Administrative Law Judges (OALJ) and the unavailability of online research since June 1, 2009, because the Department permitted its contract with WestLaw for the benefit of the OALJ to expire.

[5] In its April 16, 2009 Answer to the Complaint, as in its January 30, 2009 letter to the Court, Cold Springs raised issues not here addressed that were not within the scope of the Complaint and are outside the Court's administrative jurisdiction. (*See* note 10, *infra*, and accompanying text.)

[6] Attached to the Complaint as Exhibit A.

IHACC had not corrected the monitoring findings by March 26, 2008, when HUD issued a Notice of Intent (NOI) to IHACC indicating that HUD intended to impose certain remedies unless the findings were corrected within 30 days.[7] IHACC did not respond to this letter or correct the findings. Nor did IHACC respond to a subsequent letter stating that, because the monitoring findings had still not been corrected, HUD was imposing the remedies described in the NOI.

On September 6, 2008, the Cold Springs Tribal Counsel resolved that the tribe would administer its own NAHSDA funding. HUD notified Respondent on September 30, 2008, that HUD was imposing remedies against it because the monitoring findings concerning its grant had not been corrected.[8] Those findings involved 1) Respondent's grant funds which had not been properly accounted for and 2) environmental clearances which were required but had not been obtained for activities that were alleged to have been performed with the grant money.

APPLICABLE LAW

Standard of Review. "A party claiming relief or a party against whom relief is sought may timely move, with or without supporting affidavits, for summary judgment on all or part of the claim." 24 C.F.R. § 26.40(f). Pursuant to 24 C.F.R. § 26.32(l), this Court may "decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact[.]" Summary judgment will be granted where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). Summary judgment is a "drastic device" because, when exercised, it cuts-off a party's right to present its case. Nationwide Life Ins. Co. v. Bankers Leasing Ass'n. Inc., 182 F.3d 157, 160 (2d Cir. 1999). "Accordingly, the moving party bears a heavy burden of demonstrating the absence of any material issues of fact." Id. In reviewing a motion for summary judgment, the reviewing court must "resolve all ambiguities and draw all reasonable inferences in favor of the party defending against the motion." Id.

Statutory Scheme. HUD is a Federal Executive Department of the United States Government.[9] As part of its functions, HUD carries out the NAHASDA programs—such as the IHBG program—through the Office of Native American Programs. Under the Act, HUD provides grants, loan guarantees, and technical Assistance to Indian Tribes (and Alaska Natives' villages) for the development and operation of low-income housing. When an IHBG program participant is in substantial noncompliance with its obligations as a grant recipient, HUD is authorized (and required) by NAHASDA to impose certain delineated remedies. The pertinent statutory remedies are:

[7] Attached to the Complaint as Exhibit B.

[8] Attached to the Complaint as Exhibit C.

[9] 42 U.S.C. § 3532.

25 U.S.C. § 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall--

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply . . . .

Regulatory Implementation. IHBG recipients are required to monitor their grant activities, ensure compliance with applicable Federal requirements and monitor performance goals under their Indian Housing Plans (IHPs). 24 C.F.R. § 1000.502(a). When an IHBG is provided for the grant beneficiary (i.e. Indian tribe), the tribe may act as the grant recipient by administering its own IHBG program. Alternatively, the tribe may choose to designate another organization—a Tribally Designated Housing Entity—as its IHBG recipient to administer the program. *See* 25 U.S.C. § 4103(21). However, even when a Tribally Designated Housing Entity is the recipient, IHBG beneficiaries retain oversight responsibilities. The grant beneficiary "is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the Tribally Designated Housing Entity to prepare periodic progress reports including the annual compliance assessment, performance and audit reports." 24 C.F.R. § 1000.502(b).

Applicable requirements of NAHASDA include ensuring that IHBG funds are only used for eligible affordable housing activities, 25 U.S.C. § 4132, and are incompliance with environmental laws. Recipients that assume environmental review responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, are required to follow the environmental review procedures in 24 C.F.R. Part 58. 24 C.F.R. § 1000.20(b). The tribe must receive copies of monitoring evaluations "so that it can fully carry out its oversight responsibilities under NAHASDA." 24 C.F.R. § 1000.506. Also, the tribe is charged with monitoring its recipient and taking appropriate actions to correct any discovered noncompliance issues. *See* 24 C.F.R. § 1000.510.

If HUD determines that an IHBG recipient is in substantial noncompliance with the requirements of NAHASDA, as that term is defined in 24 C.F.R. § 1000.534, the Department may impose the aforementioned remedies. The imposition of remedies process is commenced by the issuance of a NOI to the recipient, informing the recipient that HUD is intending to impose remedies against the recipient, because the recipient may be in substantial noncompliance with NAHASDA requirements,. The NOI provides a period of time in which to correct noncompliance issues before remedies are imposed. It also offers the recipient an

opportunity for an informal meeting with HUD to resolve the noncompliance issues. *See* 24 C.F.R. § 1000.532.

If the noncompliance issues are not resolved, HUD may issue an Imposition of Remedies letter (IOR) to the recipient informing the recipient that it may request a hearing under 24 C.F.R. § 1000.532(b), and after the recipient has either taken advantage of or waived its hearing rights, HUD may impose one or more of the available remedies. *See* 24 C.F.R. § 26.9.

FINDINGS OF FACT

The Court has considered all matters presented by the parties, including the Complaint and supporting exhibits, and the Answer to the Complaint. The Answer does not respond to all of the allegations, but in aggregate it admits or fails to deny them. Allegations not specifically denied are admitted. 24 C.F.R. § 26.14(c). Respondent does not challenge the authenticity or contents of any of the documents which are attached as exhibits to the Complaint. Therefore, all factual allegations in the Complaint, including its exhibits, are admitted, and there are no disputed issues of material fact.

Respondent has raised issues outside the scope of the Complaint, and outside the jurisdiction of this administrative proceeding.[10] These issues pertained to the relationship between HUD, IHACC, Cold Springs and the two other Indian tribes represented by IHACC, and longstanding issues going back a number of years. In correspondence the Court suggested resolution of those issues by agreement between the parties.[11] Despite several continuances to accommodate settlement discussions, no agreement was reached.

Respondent has also raised several counterclaims asserting that HUD failed to fulfill its monitoring role authorized by statute and implementing regulation, and failed to take earlier corrective action. However, none of those assertions amount to a defense to the charged substantial noncompliance by Respondent.

The facts presented in the foregoing **Procedural History** and **Background** paragraphs, are established by a preponderance of the evidence, as are the following undisputed facts from exhibits in the record:

1. On April 18-21, 2005, HUD's SWONAP conducted an on-site monitoring review of IHACC's administration of HUD-funded grants it received on behalf of three Indian Tribes (including Respondent), in order to ensure compliance with applicable requirements.

2. IHACC was afforded the opportunity to comment on the draft monitoring report. After considering the draft monitoring report and IHACC's comments, SWONAP issued the Final Monitoring Report (FMR) on September 16, 2005.

[10] Cold Springs' letter to the Court, January 30, 2009.

[11] ALJ reply, February 2, 2009, to Cold Springs' letter of January 30, 2009.

3. The FMR contained 18 findings of deficiencies in program performance that represent violations of statutory and/or regulatory requirements. Cold Springs received copies of both the draft monitoring report and the FMR. The findings at issue here were **Finding 1** and **Finding 9**, both of which concerned IHACC's use of three grants it received under the United States Housing Act of 1937,42 U.S.C. § 1437 *et seq*., for three tribes, totaling $8,954,932.00.[12]

4. As concluded in FMR, **Finding 1,** IHACC violated applicable regulations by failing to provide supporting expense documentation for the approved acquisition of an office building and had engaged in other activities with the grants administered by IHACC for all three tribes that were unapproved and/or lacked supporting documentation.[13]

5. As concluded in FMR **Finding 9,** IHACC did not comply with required environmental review procedures for the same three grants as mentioned in **Finding 1**. The monitoring review discovered unclear and incomplete Environmental Review Records (ERRs) for the grants administered by IHACC for all three tribes.[14]

6. HUD set January 31, 2006, as the target date for completion of the required corrective actions, and later extended the compliance dated to April 30, 2006. IHACC did not close **Finding 1** or **Finding 9** by the extended target date.

7. On March 26, 2008, HUD issued an NOI stating that the Department intended to impose remedies against IHACC for its failure to correct the open findings in the FMR. The NOI provided IHACC with an opportunity to request an informal meeting with SWONAP to resolve the noncompliance issues.[15]

8. On May 2, 2008 and May 9, 2008, IHACC and SWONAP representatives met to discuss HUD's intention to impose remedies. However, as related by letter to the Vice Chairman of IHACC's Board of Commissioners, by letter from HUD's General Deputy Assistant Secretary for Public and Indian Housing, dated July 11, 2008, none of the noncompliance issues identified in the NOI were corrected, and disallowed funds were not repaid. **Finding 1** and **Finding 9** were not corrected by IHACC or Respondent. Specifically, neither entity provided documentation to HUD to demonstrate proper expenditure of the funds or compliance with environmental requirements.

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[12] Grant number CA99B 129020 was to the Santa Rosa Rancheria Tachi Tribe in the amount of $2,777,908.00; grant number CA99B129021 was to the Chicken Ranch Rancheria in the amount of $2,590,890.00; and grant number CA99B129022 was to Cold Springs in the amount of $3,586,134.00.

[13] To correct this finding, IHACC was directed to submit the supporting documentation for grant expenditures, or reimburse HUD with non-program funds for any unsupported expenditures.

[14] To correct this finding, IHACC was directed to either submit documentation substantiating that the projects undertaken with the grants had ERRs in compliance with 24 C.F.R. Part 58, or reimburse HUD with non-program funds for all grant activities not in compliance with applicable environmental review requirements.

[15] A copy of the NOI was provided to Respondent and attached to the Complaint as Exhibit B.

9. Cold Springs assumed the role of recipient of its own IHBG funds. On June 3, 2008, SWONAP received Respondent's Indian Housing Plan for program year 2008, indicating that Cold Springs would administer its IHBG program instead of IHACC. This was confirmed by a Tribal Council resolution on September 6, 2008.

10. NOI **Finding 1** and **Finding 9** still had not been corrected by September 30, 2008, when HUD issued an IOR to Cold Springs, disallowing the entire amount of the grant in issue and immediately suspending payments on Cold Springs' current IHBGs. HUD also indicated its intent to terminate current and adjust future IHBGs, depending on the outcome of any requested administrative hearing.

11. On December 4, 2008, HUD issued an amended IOR to Respondent. The amended IOR removed the immediate suspension of payments to Cold Springs on its current grants, but left in place the other remedies, and added their applicability to IHBG 08IT0607720, awarded to Cold Springs by SWONAP on October 15, 2008.[16]

Discussion. As discussed more fully above, before granting a motion for summary judgment, the Court must determine that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. The Motion for Summary Judgment asserts that HUD is entitled to summary judgment on substantial noncompliance because there are no material facts in dispute. Respondents failed to satisfactorily address and correct **Findings 1** and **Finding 9** in HUD's Final Monitoring Report of IHACC, dated September 25, 2005. The undisputed evidence establishes that:

1. IHACC administered IHBG funds awarded to Cold Springs;

2. Cold Springs was responsible for the proper administration and expenditure of the funds;

3. Cold Springs was on notice for uncorrected violations for which it is responsible; and

4. Cold Springs' noncompliance is substantial and sufficient in fact and law to warrant imposition of the aforementioned remedies of which Respondent was placed on notice.

CONCLUSION AND ORDER

HUD has established by uncontested evidence that Cold Springs is in substantial noncompliance with NAHASDA requirements. Cold Springs failed to carry out its monitoring responsibilities as grant recipient; specifically, it failed to ensure that IHACC's use of the funds for grant number CA99B129022 complied with all financial and environmental requirements; and failed to bring those matters into compliance despite notice and adequate opportunity to do so.

[16] Attached to the Complaint as Exhibit E.

HUD's proposed administrative action in this matter—to impose the remedies described in the IOR—is supported by the required standard of proof, a preponderance of the evidence. 24 C.F.R. § 26.24(a).

For the foregoing reasons, the Court has determined that HUD may impose the remedies proposed against Respondent as stated in its September 30, 2008, IOR, as modified the amended IOR, dated December 4, 2008.

So **Ordered**.

[signed]

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J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. As an extension of the hearing procedure prescribed in 24 CFR § 1000.540), the appeal procedure is set forth in detail in 24 C.F.R. § 26.52. (2009). The foregoing order may be appealed to the Secretary of HUD by either party within 30 days after the date of this decision. The Secretary (or designee) may extend this 30-day period for good cause. If the Secretary (or designee) does not act upon the appeal within 90 days of its service, this decision becomes final.

Service of Appeal. Any appeal must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 401-5153
Scanned electronic document: secretarialreview@hud.gov

Copies of Appeal. Copies of any appeal should also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.